

# Italian Constitutional Court says Berlusconi had to be loyal

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The Constitutional Court remains true to itself providing, once again, the proper functioning of the constitutional powers. In a decision that – according to rumors that filter from Rome – was serene and without significant opposition among the judges, the “Consulta” has rejected the conflict of powers with which the Head of Government (which at that time was Silvio Berlusconi) lamented the lack of recognition by the court of Milan, of the “legitimate impediment” opposed by the accused-President not to attend a hearing.

Berlusconi had suddenly moved the date of a Council of Ministers, making it coincide precisely with the audience that saw him accused for the “Mediaset rights” issue. Yet, the Court noted, the schedule of hearings had been specially agreed between the accused and the panel of judges, just to avoid that the judicial problems of Berlusconi-entrepreneur impeded the duties of Berlusconi-head of government.

The MPs of the “People of Freedom” party cried foul: once again the hated Court does not facilitate the destinies of the charismatic leader. Beyond the political positions, however, what are the points to note in this story?

First, it is to debunk the myth, popular in these days, according to which, in the event of a favorable verdict, it would have achieved the judicial “salvation” of Mr. Berlusconi. Highly unlikely: the process would be continued and the Supreme Court would deliver its verdict before the statute of limitation.

The same Supreme Court, in the judgment in which it dismissed the transfer of the process to Brescia, said – about the possible effects of a judgment by the Constitutional Court favorable to Berlusconi – that the “impairment of the whole process appears to be more a hidden expectation on the side of Sen. Berlusconi than a real risk of such an outcome”. The first mistake, then, was to charge the Constitutional Court’s decision of so much value.

Secondly, the decision is a sign of continuity. The Court, in fact, has said since 2001 that the power to verify a legitimate impediment competes to the court. No exception is therefore admissible, even for the head of government: it is necessary to follow the common procedural rules. Participation in a meeting of the Council of Ministers, in itself, is not automatically a legitimate impediment.

And now we come to the third point. In order for the Council of Ministers to be treated as a legitimate impediment to appear at the hearing the President would have had to prove it. Even in its press release, the Court is clear: unlike what was done in two other occasions, Berlusconi has not explained what were the reasons of urgency, nor what were the possible alternative dates for a hearing. All this despite

the fact that the timetable of hearings had been previously agreed between the accused and the judges, to ensure Mr. Berlusconi to be able to freely fulfill his duties as head of government. All this, according to the Constitutional Court, violates the principle of “loyal cooperation”, which is also binding on the President of the Council.

The Constitutional Court, in fact, remains faithful to the line already drawn in the judgment n. 23 of 2011, also written by Judge Sabino Cassese, a scholar known internationally. The separation of powers, the Court correctly notes, is not injured by the attribution to the court to assess the impediments of the President of the Council. As long as this power is inspired by a loyal cooperation. This, the Court noted in 201, however, must be two-way. It must, that is, illuminate well the behavior of the President of the Council of Ministers.

